

Service Date: February 5, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF The Applications for)	
Approval of (A) the General Filing of)	UTILITY DIVISION
Pacific Power & Light Company in)	
Demonstration of One Test Year as a)	
Merged Company and (B) Proposed New)	DOCKET NO. 90.11.78
Tariff, Schedule No. 47T, on the PP&L/)	
Champion International Inc. Electric)	ORDER NO. 5538
Service Contract.)	

PROCEDURAL ORDER

Introduction

Under the authority of ARM 38.2.2702, and following issuance of a proposed procedural order, the Commission enters this order setting forth the procedure to be followed in Docket No. 90.11.78.

In this Order the term "parties" includes the Applicant, Pacific Power & Light Company (PP&L) and all intervenors. Individuals or entities are not parties unless they have been granted intervention by the Commission.

Copies of all pleadings, motions, discovery requests, prefiled testimony and briefs shall be filed with the Commission and served on all parties. Copies of all discovery responses shall be served on the Commission, on the party making the discovery requests and on parties who request the responses pursuant to paragraph 12 of this Order. In the case of a filing directed to the

Commission, such as motions, testimony and briefs, the original and ten copies shall be filed with the Commission. Service upon the parties shall be upon the parties' attorney of record and such other individuals as may be reasonably designated by the attorney of record.

All dates listed in the following schedule are mailing dates. Parties must mail all material by the most expeditious method available at reasonable cost. In choosing the "most expeditious method available," the parties should be cognizant of the obligations imposed upon other parties by the following schedule. Parties may make arrangements among themselves for the use of express mail.

Schedule

Unless otherwise herein specified, the following schedule shall apply in this Docket:

- (a) February 4, 1991: Final day for timely filing of Petitions to Intervene by persons who are interested in and directly affected by this Docket.
- (b) February 15, 1991: Final day for written discovery directed to PP&L.
- (c) March 5, 1991: Final day for completion by PP&L of all answers and responses to written discovery directed to PP&L by other parties pursuant to paragraph 4(b).
- (d) March 21, 1991: Final day for completion and service upon PP&L and other parties of the prepared testimony and exhibits of all parties except PP&L.
- (e) April 8, 1991: Final day for written discovery directed to all parties by PP&L; final day for intervenor discovery to parties other than PP&L.
- (f) April 24, 1991: Final day for completion of answers by all parties to written discovery made pursuant to paragraph 4(e).
- (g) May 10, 1991: Final day for service of rebuttal testimony by PP&L and testimony of other parties which is in rebuttal to testimony filed pursuant to paragraph 4(d).

- (h) May 28, 1991: Final day for written discovery directed to all parties that filed rebuttal testimony pursuant to paragraph 4(g); such discovery must be directly related to the rebuttal testimony.
- (i) June 12, 1991: Final day for completion of answers by all parties to discovery made pursuant to paragraph 4(h).
- (j) June 28, 1991: Final day to provide the Commission and parties with a witness list indicating the sequence that witnesses will be called by the parties at the hearing; final day for any party that intends to introduce evidence, data requests or other discovery as part of its basic case, to notify all parties of the specific data requests or other discovery it plans to so introduce.
- (k) July 16, 1991: Opening day of hearing in Docket No. 90.11.78.

Intervention

Persons seeking to intervene after February 4, 1991, must file a Petition to Intervene with the Commission. The petition shall demonstrate (A) the position that the intervenor will take if the intervention is granted, (B) that the proposed intervenor has an interest in and is directly affected by this Docket, (C) that the intervention, if granted, will not delay or prejudice the proceeding in the Docket, and (D) good cause why the petition was not timely filed. (ARM Section 38.2.2401 et seq.).

Discovery

Parties shall submit discovery requests and responses at the earliest possible date. The schedule in paragraph no. 4 herein represents deadlines and not target dates. Written discovery, filed testimony or data responses submitted after the appropriate deadline may be allowed only by leave of the Commission, upon request and a showing of good cause.

Data responses shall be filed and served no more than 14 days after requests have been served/received, to allow parties opportunity to determine completeness or request clarification before the deadline. Parties are encouraged to communicate perceived deficiencies in discovery and to attempt to remedy informally, when possible, to avoid delay from filing objections pursuant to paragraph nos. 13 and 14 herein. If a party fails to submit responses on or before 14 days, but does so on or before the appropriate deadline, the requesting party may have an additional 7 days from response to ask for and obtain satisfactory responses pursuant to this informal process. Objections to the Commission pursuant to paragraph nos. 13 and 14 shall be a remedy of last resort. When

using these informal procedures, requesting parties shall send written notice to the Commission and those parties which have specifically requested copies of answers to discovery requests pursuant to paragraph 12. Notice shall specify the applicable data request number(s), agreement to clarify or complete answer, date of service of initial request, and appropriate discovery deadline.

The term "discovery" as used in this order includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as informal "data requests." The Commission urges all parties to conduct their discovery as much as possible through the use of data requests.

All parties' data requests must be numbered consecutively throughout this Docket, beginning with the number one (1). All data requests must include at the beginning of each request a short description (five words or less) explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit no., page no., etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help the Commission to identify more quickly all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

Multi-part requests may be used. Each part of a multi-part request should be denoted by a lower case letter (a, b, c, d and e). Requests should be limited to five parts (a-e) without any sub-parts. If additional parts are necessary, additional requests should be made. A single part request should be denoted by the request number only.

Examples of acceptable data requests follow:

Acceptable Data Request Format

PSC-500 Re: Purchased Gas Contracts
 Witness - Doe, Page JQD-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 Re: Bypass
 Witness - Roe, Page JAR-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?

- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?
- c. What risks of bypass would be shared by ratepayers and shareholders as a result of the Company's proposed treatment?

Written discovery and data requests will be served on all parties to avoid duplicate requests in subsequent rounds of discovery. Unless otherwise agreed, copies of answers to all written discovery and data requests will be served only on parties specifically requesting them and on the Commission. Here, the term "parties" includes the parties, their attorneys, and witnesses testifying on matters to which the answers relate. A party should inform that party to whom data requests or written discovery is directed that it wishes to obtain material requested by any other party. The Commission encourages all parties to scrutinize the material provided in the Docket before submitting data requests to limit unnecessary data requests. The Commission further encourages parties to discuss preferred format for data requests and responses, consistent with paragraphs 9-11 of this Order.

Parties have five (5) days from receipt of written discovery or data requests, or until a response is due, whichever is less, to file objections to the request(s). Notice of the objection shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by prompt ruling or may schedule argument on the objections. Failure to object will be deemed acceptance of the requests. Parties are encouraged to try to resolve concerns about requests pursuant to paragraph 7, before filing objections.

Any requesting party dissatisfied with the response to any written discovery or data request must serve its written objection(s) simultaneously upon the Commission and parties, within five (5) days after receipt of such response. Parties requesting clarification or more complete information pursuant to the informal process in paragraph 7 shall have five days from the completed response or the appropriate deadline in paragraph 4, whichever is later, to serve objections as provided in this paragraph. The Commission may dispose of such objection(s) by prompt ruling or may schedule argument on the objection(s). The Commission will issue its order either sustaining or overruling the objection(s), and set a deadline for satisfactory response(s) if required.

A party's unexcused failure to answer data or discovery requests may result in an order:

- (a) denying the disobedient party the right to support or oppose related claims or to introduce related matters into evidence;
- (b) striking specific pleadings or testimony; or
- (c) staying further proceedings until the request is satisfied; or
- (d) dismissing the action or proceeding, in part or entirely.

Neither the Commission nor the Commission staff is a party to this proceeding. Commission staff has the rights and responsibilities of parties under Commission rule. See ARM 38.2.601(n). The Commission directs its staff to make every good faith effort to meet the discovery deadlines imposed on parties in this Order. However, the Commission staff, in addition to responsibilities imposed by this Order, has an overriding responsibility to advise the Commission in the furtherance of just and reasonable rates. That responsibility carries with it a duty to ensure that all issues are thoroughly explored on the record. If important issues remain unexamined after

discovery deadlines and diligent discovery efforts, the Commission reserves the right for its staff to conduct discovery beyond the deadlines in this Order. Failure of parties to cooperate with Commission staff in responding to this late discovery may result in a continuance of the scheduled hearing or in the reservation of certain issues for a future proceeding.

Testimony and Evidence

There should be a progressive narrowing of issues as prefiled testimony proceeds from direct to rebuttal. The Commission will scrutinize and disallow introduction of new issues or data in new areas unless reasonably related to issues earlier identified in the application, in Commission orders or in testimony prefiled in conformance with this order.

At the hearing, prefiled direct, answer and rebuttal testimony will be adopted into the record without the need of recitation by the witness.

All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter the manner of identifying their exhibits.

Parties shall make available to the Commission copies of any previously unfiled document(s) used in cross-examination, unless good cause is shown why copies are not available.

Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for

other good cause, and if previous arrangements have been made with the Commission and all parties.

Only by permission of the presiding officer may parties present "live" rebuttal testimony only in direct response to an issue raised for the first time in cross-examination or the testimony of a public witness.

The Commission may allow citizens and citizen groups to make statements without submitting prepared written testimony; also, citizens may read prepared written testimony or have it adopted directly into the record.

The rules of evidence in effect in the District Courts of the State of Montana at the time of the hearing in this Docket will be used at the hearing.

Prehearing Motions and Conferences

Any motions connected with this docket, including motions to strike prefiled testimony or motions related to procedural matters, shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party. If oral argument is requested, and the request is granted, the party requesting oral argument shall notice the same for hearing before the Commission.

The Commission may set a final Prehearing Conference before the hearing to discuss the feasibility of settlement of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

Nothing in this order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of PP&L at any time.

Witness Sequence List

The Applicant shall provide the Commission with one witness list indicating the sequence that witnesses will be called by the parties at the hearing. The Applicant and any other parties to this Docket are responsible to negotiate among themselves the witness sequence. The Applicant may inform the Commission and parties of the final sequence in writing or by telephone directed to the parties attorneys of record and to the Commission staff attorney.

DONE AND DATED THIS 4th day of February, 1991 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)